

DEWEY & LEBOEUF LLP
Barbara Caulfield
bcaulfield@dl.com
One Embarcadero Center, Suite 400
San Francisco, California 94111
Telephone: (650) 845-7000
Facsimile: (650) 845-7333

Ralph C. Ferrara
rferrara@dl.com
Ann Ashton
aashton@dl.com
1101 New York Avenue, N.W., Suite 1100
Washington, DC 20005
Telephone: (202) 346-8000
Facsimile: (202) 346-8102

Jonathan E. Richman
jrichman@dl.com
1301 Avenue of the Americas
New York, New York 10019
Telephone: (212) 259-8537
Facsimile: (212) 259-6333

*Attorneys for Brocade
Communications Systems, Inc.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**MARY E. BARBOUR AS TRUSTEE FOR
THE MARY E. BARBOUR FAMILY
TRUST ONE, Derivatively On Behalf of
BROCADE COMMUNICATIONS
SYSTEMS, INC.,**

Plaintiff,

vs.

**GREGORY L. REYES, DAVID L.
HOUSE, MICHAEL KLAYKO,
RICHARD DERANLEAU, KUMAR
MALAVALLI, ANTONIO CANOVA,
MICHAEL J. BYRD, STEPHANIE
JENSEN, NEIL DEMPSEY, SANJAY
VASWANI, L. WILLIAM KRAUSE,
ROBERT R. WALKER, GLENN C.
JONES, MICHAEL J. ROSE, SETH D.
NEIMAN, NICHOLAS G. MOORE,
CHRISTOPHER B. PAISLEY, WILLIAM
K. O'BRIEN, LARRY SONSINI, MARK**

Case No. C 08-02029 CRB

[PROPOSED] ORDER

**Date: September 19, 2008
Time: 10 a.m.
Courthouse: Hon. Charles R. Breyer**

PROPOSED ORDER
CASE NO. C 08-02029 CRB

1 **LESLIE, TYLER WALL, RENATO A.**
2 **DIPENTIMA, JOHN W. GERDELMAN,**
3 **ROBERT D. BOSSI, KPMG, LLP,**
WILSON SONSINI GOODRICH &
ROSATI, P.C. AND DOES 1-25, inclusive,

4 **Defendants,**

5 **-and-**

6 **BROCADE**
7 **COMMUNICATIONS**
8 **SYSTEMS, INC., a Delaware**
corporation,

9 **Nominal**
10 **Defendant.**

[PROPOSED] ORDER

WHEREAS, Nominal Defendant Brocade Communications Systems, Inc. (“Brocade”) has moved this Court to dismiss Plaintiff’s Amended Verified Shareholder Derivative Complaint, pursuant to Rule 12(b) and 23.1 of the Federal Rules of Civil Procedure; and

WHEREAS certain purported shareholder derivative actions were commenced in this Court beginning in or around June 2005, asserting a variety of claims relating to historical stock option grants and associated accounting practices of Brocade and were thereafter consolidated in the Lead Action; and

WHEREAS the allegations in the instant action are substantially duplicative of those in the Lead Action; and

WHEREAS the consolidated derivative complaint in the Lead Action was dismissed for failure to make a pre-suit demand on the Brocade board or to adequately plead that such a demand was excused, and the plaintiffs in the Lead Action thereafter made a demand on Brocade’s board of directors to bring the claims alleged in their complaint; and

WHEREAS Brocade’s board of directors formed a special litigation committee (“SLC”) consisting of two outside, independent directors and delegated to it plenary authority to decide whether it was in the best interest of the Company and its shareholders to pursue or otherwise resolve the claims raised in the derivative lawsuits and, if so, to pursue or resolve those claims and/or any other Company claims the SLC deemed appropriate relating to, among other things, the derivative lawsuits, Brocade’s historical stock options practices, and legal fees and expenses advanced by the Company on behalf of its former and current employees, officers and directors with regard to various associated investigations and court actions; and

WHEREAS the SLC conducted an investigation and determined that Brocade should pursue direct claims against many of the defendants named in this action and not provide an omnibus release to individuals against whom it determined not to proceed at this time, but

1 rather should take steps to preserve such claims; and

2 WHEREAS the SLC has determined that the direct claims Brocade intends to
3 prosecute at this time should proceed in the Lead Action; and

4 WHEREAS the SLC has filed a Second Amended Complaint in the Lead Action
5 alleging the direct claims described above; and

6 WHEREAS Plaintiff's allegations of demand futility in this action are conclusory,
7 unparticularized and/or immaterial as a matter of law; and

8 WHEREAS Plaintiff has therefore failed adequately to plead that pre-suit demand
9 was excused; and

10 WHEREAS, the SLC has determined that, if and to the extent that this action is
11 not dismissed for failure to make a pre-suit demand, (a) Brocade should be realigned as the sole
12 party-plaintiff in this action and substituted for the current shareholder Plaintiff, who shall be
13 dismissed from the case, and (b) the proceedings herein should be stayed in order to preserve
14 Brocade's ability to pursue claims asserted herein as to which it does not intend to proceed at this
15 time, pending further developments in the Lead Action and other related proceedings; and

16 WHEREAS the Court finds no collusion or evidence that Brocade will not pursue
17 its claims in good faith;

18 The Court, having considered the briefs and other documents in support of and in
19 opposition to the motion, having heard the arguments of counsel, and being fully advised in this
20 matter finds as follows:

21
22 NOW, THEREFORE, IT IS HEREBY ORDERED THAT

- 23
24 1. Nominal Defendant Brocade Communications Systems, Inc.'s Motion to Dismiss
25 Plaintiff's Amended Verified Shareholder Derivative Complaint is GRANTED
26 and the Amended Verified Shareholder Derivative Complaint is dismissed in its
27 entirety, with prejudice.
- 28 2. IN THE ALTERNATIVE, this Court orders that (a) the parties are hereby
realigned, (b) nominal defendant Brocade is hereby re-designated as the sole

1 party-plaintiff in this action and substituted for the shareholder Plaintiff herein,
2 who is dismissed from the action, and (c) all proceedings in this action are
3 immediately stayed pending further developments in the Lead Action or until
4 further Order by this Court.

5 IT IS SO ORDERED.

6 Dated:

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9 The Honorable Charles R. Breyer
United States District Judge
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